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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

STATEMENT AS TO JURISDICTION.

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STATEMENT AS TO JURISDICTION.

May It Please the Court:

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this his jurisdictional statement on the basis of which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree of a three-Judge District Court for the Eastern District of Louisiana, entered on July 23, 1968, denying a permanent injunction and refusing to declare certain provisions of Louisiana

law, under which a bond election was held, to be in violation of the Constitution of the United States, and that a substantial question is presented.

OPINIONS BELOW

The District Court delivered a written opinion and dissenting opinion on July 15, 1968, and entered Judgment on July 23, 1968. The judgment and opinions are reported in 286 F. Supp. 823 (1968). Copies of the opinions and judgment are attached to this jurisdictional statement, as Appendices B and C.

JURISDICTION

The appeal herein is from a final decree made and entered by the United States District Court for the Eastern District of Louisiana specially constituted under 28 U.S. Code, Sections 2281 and 2284 upon the plaintiff's application for a temporary and permanent injunction to restrain the enforcement, administering, execution of, or the giving effect to provisions of the Constitution and statutes of the State of Louisiana which require the ownership of property and the payment of taxes thereon as a qualification or a condition precedent to voting in elections in Louisiana as repugnant to the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The application of plaintiff further sought a Judgment declaring the aforementioned provisions of the Constitution and statutes of the State of Louisiana to be void for repugnance to the same clauses of the Fourteenth Amendment of the Constitution of the United States and particularly declaring void an election held by the City of Houma, Louisiana on October 24, 1967, pursuant to the

aforementioned constitutional and statutory provisions of the State of Louisiana.

The final decree appealed from was made on July 23, 1968 and entered on July 25, 1968. Notice of appeal was filed in the United States District Court for the Eastern District of Louisiana on September 6, 1968.

The Supreme Court of the United States has jurisdiction to review by direct appeal the Judgment complained of by the provisions of 28 U.S. Code, Sections 1253 and 2101(b).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the Judgment on direct appeal in this case. *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 80 S. Ct. 568 (1960) and *Radio Corp. of America v. United States*, 341 U.S. 412, 71 S. Ct. 806 (1950).

Statutes and constitutional provisions are Louisiana Constitution Article 14, Section 14(m) (West La. Const. Vol. 3, Page 42); Sub-Part C—Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (West LSA-R.S. 33:4251-4262, Vol. 20A, Pages 178-186), and Part II, Chapter 4, Subtitle II, Title 39 of the Louisiana Revised Statutes (West LSA-R.S. 39:501-518, Vol. 22, Pages 685-730), all of the above cited being annexed hereto, as Appendix A.

The three-judge District Court held the above statutes not to be unconstitutional, with a dissent to said decision rendered by the panel Judge from the Fifth Circuit Court of Appeals.

QUESTIONS PRESENTED

Article 14, Section 14(m) of the Louisiana Constitution of 1921 provides that ". . . The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. . . ."

Pursuant to the above constitutional provisions, La.-R.S. 33:4251-4262 were enacted and which, by reference, incorporated La. R.S. 39:501-518.

The above cited constitutional and statutory provisions set forth the procedure for revenue bond elections in corporate municipalities in the State of Louisiana, which provisions require that the voters be property-owning tax-payers. The applicable statutes provide that any bonds issued thereunder shall be repaid solely and exclusively from the income and revenues of the utility acquired, constructed, or improved with the monies derived from the sale of such bonds. The principal question presented is:

> Whether the above cited constitutional and statutory provisions of the State of Louisiana are unconstitutional and in violation of the due process and equal protection requirements of the Fourteenth Amendment of the Constitution of the United States insofar as they require the ownership of property and the payment of taxes thereon as a qualification to vote in a revenue bond election, which election cannot, either directly or indirectly, impose any tax or other burden on property-owning tax-payers.

STATEMENT OF THE CASE

Joseph Q. Cipriano, appellant herein, is a duly registered and qualified voter in the City of Houma, Parish of

Terrebonne, State of Louisiana but does not own any real property nor does he pay any municipal ad valorem taxes on any such property. On September 12, 1967 the defendants, the Mayor and Board of Aldermen of the City of Houma, Louisiana adopted the resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana pursuant to Part II, Chapter 4, Title 39, Section 508 (La. R.S. 39:508), and Sub-Part C, Part I, Chapter 10, Title 33, Section 4258 (La. R.S. 33:4258) of the Louisiana Revised Statutes of 1950, and Article 14, Section 14(m) of the Louisiana Constitution of 1921 to authorize the issuance of utility revenue bonds by said city in the amount of $10,000,000.00. Under the terms of the above resolution the election was specifically limited to resident property taxpayers of the City of Houma.

The election was held on October 24, 1967, pursuant to the resolution adopted on September 12, 1967 and further pursuant to the authorities hereinabove stated. The Mayor and Board of Aldermen met on October 25, 1967 and canvassed the returns of the election and declared the results thereof. In said election 1,828 voters representing $2,736,258.00 in assessed valuation voted in favor of the proposition and 896 voters representing $1,108,268.00 in assessed valuation voted against the proposition.

Appellant is a member of a class of 6,926 duly qualified and registered non-property-taxpaying voters in the City of Houma, all of whom are similarly situated and entitled to bring a class action under Rule 23 of the Federal Rules of Civil Procedure. Appellant and all members of this class were prohibited from voting in the election held in the City of Houma on October 24, 1967 because of the statutory provisions of Louisiana law requiring that a voter be a qualified resident property taxpayer of the City of Houma.

During the year 1967 the total number of residents of the City of Houma was approximately 35,000. The total number of registered voters in the City of Houma on October 24, 1967 was 11,606. The total number of property taxpaying voters on October 24, 1967 in the City of Houma was 4,680. The total number of non-property-taxpaying registered voters on October 24, 1967 in the City of Houma was 6,926.

Plaintiff, appellant herein, brought this action in the United States District Court for the Eastern District of Louisiana, New Orleans Division, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

Appellant sought a Declaratory Judgment under Title 28, Sections 2101 and 2102 to have declared void and unconstitutional and in conflict with the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States, the provisions of the statutes and Constitution of Louisiana which have the effect of requiring ownership of property and the payment of taxes thereon as a condition of voting in elections as set forth in said statutes.

Appellant further sought an injunction under the provisions of Title 28 of the United States Code, Section 1343 (3), (4), Title 42, United States Code, Sections 1981 through 1985 and under the provisions of Rule 65 of the Federal Rules of Civil Procedure to enjoin the defendants from issuing bonds pursuant to said election of October 24, 1967 and further enjoining the defendants from enforcing, administering or giving any effect to the cited provisions of the Constitution and statutes of Louisiana.

The Trial Court, in a divided opinion, found for the defendants holding that the cited constitutional and statu-

tory provisions of Louisiana were not so arbitrary or irrational as to be in violation of the Fourteenth Amendment of the United States Constitution.

THE QUESTIONS ARE SUBSTANTIAL

The issue involved in this proceeding has not been passed upon by this Court and is of importance to each qualified voter in the United States. It also directly affects the individual states and all county, municipal or other political subdivisions. The issue is directly concerned with the ownership of property as a requirement or condition of voting in a non-tax election, and indirectly is concerned with the just and proper distribution of the tax burden between property owning and non-property owning citizens.

1. Appellant and all other non-property-taxpaying voters, who are otherwise duly qualified and registered and who are residents of the City of Houma, Louisiana, have a proprietary interest in the municipal utility properties owned and operated by the City of Houma and revenues derived therefrom that is equal to the interest of all other resident voters. These utility revenues go into the General Fund of the City of Houma and therefore go towards providing general city services for all citizens. The issuance of the bonds authorized by the abovementioned election held on October 24, 1967 would create a lien and privilege upon the revenues of the utilities owned and operated by the City of Houma. Obviously, all registered voters should have been given an equal opportunity to vote on the proposition submitted. Just as obvious is the fact that the ownership of property and the payment of taxes thereon have no relevancy or reasonable connection with one's ability to vote intelligently on the proposition. Article 14, Section 14, Sub-Section m of the Louisiana

Constitution of 1921, and La. R.S. 33:4251 et seq., and La. R.S. 39:501 et seq., insofar as they set forth the requirement of property ownership and the payment of taxes thereon to vote in a non-tax election, are in violation of the due process and equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

2. Permitting the property owner the exclusive franchise to vote the passage of revenue bonds contemplated in the cited statutes results in a clear invitation to vote favorably upon increasing the General Fund of the municipality while at the same time protecting the favorable low tax rate on his property. This is clearly discriminatory against appellant and members of his class who together represent more than 59% of the registered voters of the City of Houma.

We make special note of the fact that this is a utility **revenue** bond election called and held under the provision of Sub-Part C—Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (La. R.S. 33:4251-4262). The cited statutes provide that the bonds authorized by this election to be issued may be repaid only or exclusively from the income and revenues derived from the operation of the utility, and therefore, **by said limitation, effectively prohibit the imposition of any taxes, ad valorem or otherwise,** which may be used, in whole or in part, to retire any portion of the bonds. Because of this, a property owner should have no greater stake or interest in this election than a non-property owner as neither his property nor his property rights can in any way be adversely affected by the outcome of this election.

La. R.S. 33:4252 provides that the bonds do not constitute an indebtedness or pledge of the general credit of

the issuing authority. La. R.S. 33:4253 provides that the only security of these bonds is a pledge of the revenues of the utility and does not provide for the mortgaging of any physical assets of the utility or the issuing authority. In the event of default the only recourse is receivership of the utility and payment of the bonds from the revenues derived from the operation of said utility. Palpably, then, the full faith and credit of the issuing authority is in no way at stake.

The case relied upon by appellant as controlling in this instance is the case of *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S. Ct. 1079 (1966). The *Harper* case was concerned with the requirement of the payment of a poll tax as a qualification to vote. This case is concerned with the requirement of the payment of a property tax as a qualification to vote.

In the *Harper* case the Supreme Court concluded that a state violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution whenever it makes the affluence of the voter or the payment of any fee an electoral standard. **"Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."**

The Court further declared that **". . . we must remember that the interest of the State when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored."** (Emphasis ours)

The ruling and reasons of the *Harper* case are applicable here. All qualified voters must have an equal right and opportunity to vote in any election whether it be to

elect a candidate, to adopt a constitutional amendment or to declare on a proposition. No state has the right to impose any qualification or standard which arbitrarily, unfairly or unreasonably discriminates. In the instant case the voter qualification imposed has no relationship to either the intelligent use of the ballot or to the protection of any legitimate interest. The requirement of property ownership and the payment of taxes thereon to vote in elections such as the subject election invidiously allows and invites the property owner to vote himself a lower ad valorem tax rate while imposing the burden of the City's operation on his fellow citizens who are generally of less affluence.

If the objective of debt limitation is desirable as a general proposition, the requirement of property ownership and tax payment thereon as a qualification to vote in a revenue bond election can in no way achieve that objective but in fact militates against the achievement of that objective and actually induces the property owning taxpayer to vote favorably on the revenue issue, with its consequent increase in debt, because of his desire to increase the general revenues of the City from a source other than the property tax, and thereby insuring and protecting his low property tax rate at the obvious expense of the non-property-owning voter.

As a result of the statutes and Trial Court's decision, there is discrimination amongst citizens who have an equal interest in the general revenues of the City and some citizens, without reasonable or rational basis for distinction, are deprived of their right to vote. There is equality of interest amongst all of the citizens of the City of Houma in a revenue bond election and yet there is no equality in voting rights. The degree of this discrimination is neither

minute nor irrelevant. The Supreme Court in the *Harper* case, declared "**. . . to introduce wealth or the payment of a fee as a measure of voter's qualification is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.**" (Emphasis ours)

3. The majority opinion below made no specific findings of fact relative to the purpose for the distinction between property owners and non-property owners. The District Court erred in surmising as to what might have been the legislative reasons for the distinction without, in any manner, determining or making any finding as to the relevancy of the reasons surmised. As an example, conceding arguendo, that the reasons surmised by the Court were in fact the true legislative intent, what possible relevancy could the fact that a developer may bear the cost of installing the utility service have to the question of relative ability or inability to intelligently vote in the subject election.

CONCLUSION

It is submitted that the District Court erred in finding that there exists a reasonable or rational basis for prohibiting non-property owners from voting in a non-property-tax election.

Respectfully submitted,

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Counsel for Appellant.

CERTIFICATE

I hereby certify that a copy of the foregoing jurisdictional statement has been served on opposing counsel of record by depositing such in the United States Mail, postage pre-paid, addressed to their addresses of record.

Houma, Louisiana, November ____, 1968.

KENNETH WATKINS

APPENDIX A

STATUTES AND CONSTITUTIONAL PROVISIONS

I. LOUISIANA CONSTITUTION OF 1921

Article 14—Parochial and Municipal Affairs

Section 14—Subdivisions of State; creation; indebtedness; Bond issues; special taxes

(m). Revenue bonds; acquisition, etc., of utilities. For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein.

For the purpose of constructing, acquiring, extending or improving any revenue producing public utility, as defined by the Legislature, the Legislature may authorize any political subdivision or taxing district authorized to issue bonds under the authority of this Section 14, excluding municipal corporations, to issue its revenue bonds; which bonds shall be fully negotiable, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise not later than forty years from their date, shall not be a charge upon any income or revenue of the district or municipality not derived from the utility, and shall not be included in computing the indebtedness of the subdivision or district, for the purpose of any limitation contained in the Constitu-

tion. The Legislature shall provide that any bonds issued hereunder shall be secured by a conventional mortgage on the entire utility so constructed, acquired, extended or improved, and by pledge of the income and revenues thereof, sufficient in amount to pay principal of and interest on said bonds as they severally mature; which security may be foreclosed by seizure and sale of the encumbered property in the manner provided by law for the foreclosure of conventional mortgages, including the right to executory process, and the Legislature shall provide for the granting of a franchise to the purchaser at foreclosure sale, if any, which franchise shall run for a period not exceeding forty years from the date of such sale and shall be subject to any other constitutional or statutory limitations pertaining to the granting of municipal franchises. The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered. The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. If the validity of any bonds issued hereunder be not questioned in litigation commenced within thirty days from the date of publication of the ordinance or resolution authorizing the issuance of such bonds, the authority to issue the bonds, the legality thereof, and the security therefor, shall be conclusively presumed and

no court shall thereafter have authority to inquire into such matters. Any law or laws enacted by the Legislature for the purpose of putting this added paragraph to Subsection (m) into effect and which may have been finally passed by the Legislature after the passage of the joint resolution proposing this amendment and prior to the adoption of said amendment by the electors of Louisiana, shall be valid and fully effective if and when said proposed amendment be adopted.

II. LOUISIANA REVISED STATUTES OF 1950

A. Title 33—Municipalities and Parishes
Chapter 10—Public Utilities
Part I—Ownership, Operation and Financing
SUB-PART C. PLEDGE OF REVENUES OF UTILITY

§ 4251. Bond issue

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Subtitle 2, Chapter 4.

§ 4252. Requisites of bonds

Bonds issued under this Sub-part shall be authorized

by resolution of the governing body and shall be payable solely from the income and revenues to be derived from the operation of the utility. The bonds shall not constitute an indebtedness or pledge of the general credit of the municipal corporation within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. They shall be in coupon form but may be made registerable as to principal if so provided in the resolution authorizing the issuance. The bonds shall be in the denomination of one hundred dollars or a multiple thereof, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise in the manner provided by the governing body, but not later than forty years from their date, and shall be made payable at the place provided by the governing body. They may be made redeemable at the option of the issuing municipality prior to maturity at the premium (not greater than ten per cent of the principal amount thereof) which the governing body determines. The bonds shall be signed by the presiding officer and attested by the secretary or clerk of the municipality under the official seal of the municipality, in the manner provided in the resolution authorizing their issuance. Interest coupons to be attached thereto may be executed with the facsimile signature of the officers, and in the event that any officer whose signature appears on the bonds or coupons ceases to hold office before the delivery of the bonds to the purchaser, his signature shall nevertheless be valid and sufficent for all purposes. The bonds shall be sold in the manner and at the times which the governing body determines, except that in no event shall the bonds be sold at a price of less than par or bear an interest rate of greater than six per centum per annum.

§ 4253. Pledge of revenues of utility; receivership

Any bonds issued under this Sub-part shall be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, extended or improved with the proceeds thereof, subject only to the prior payment of the reasonable and necessary expenses of operating and maintaining the utility. Any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the governing body and officials of the municipal corporation by the provisions of this Subpart. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the utility, which receiver shall be under the duty of operating the utility and collecting and distributing the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

If more than one series of bonds is issued hereunder payable from the revenues of any utility, priority of lien on such revenues shall depend on the time of delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedure or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings. (As amended Acts 1955, No. 72, § 1; Acts 1956, No. 17, §1.)

§ 4254. Bonds to constitute negotiable instruments

All bonds issued under the provisions of this Sub-part shall constitute negotiable instruments within the meaning of the negotiable instruments law.

§ 4255. Sinking fund

Any resolution authorizing the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the utility, sums fully sufficient to pay the principal and interest of the bonds, and to create such reserve for contingencies as may be required by the resolution. The moneys in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase or retirement of the bonds prior to maturity in the manner provided in the resolution.

The resolution authorizing their issuance may contain such covenants with the future holder of the bonds as to

(1) the management and operation of the utility,

(2) the imposition and collection of fees and charges for the products, commodities or services furnished thereby,

(3) the disposition of such fees and revenues,

(4) the issuance of future bonds and the creation of future liens and encumbrances against the utility and the revenues thereof,

(5) the carrying of insurance on the properties constituting the utility,

(6) the disposition of the proceeds of any such insurance, and

(7) other pertinent matters, deemed necessary by the governing body to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this Sub-part.

§ 4256. Charges for commodities or services provided by utility

When any municipality has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided, the municipality shall impose and collect fees and charges for the products, commodities and services furnished by the utility, including those furnished to the municipality itself and its various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to (1) pay the expenses of operating and maintaining the utility, (2) provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due, (3) provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and (4) provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public. No board or commission other than the governing body of the municipality shall have authority to fix or supervise the making of these fees and charges.

§ 4257. Property of two or more utilities may be pledged

The governing body of the municipality may authorize bonds under this Sub-part payable from the revenues to be derived from two or more utilities owned and operated by the municipal corporation (whether or not such utilities are related or used in conjunction) for the purpose of constructing, acquiring, extending or improving any one or more of the utilities.

§ 4258. Election to authorize issuance of bonds

Before the resolution authorizing the issuance of bonds under this Sub-part is adopted by the governing body, the question of the issuance of the bonds shall be submitted to and approved by votes of a majority in number and amount of the property taxpayers who vote at an election held hereunder. The proposition may be submitted at either a special or general election and all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof, shall be governed by the provisions of Chapter 4, Sub-title 2, Title 39.

§ 4259. Refunding bonds

The governing body of any municipality which has heretofore issued or hereafter issues bonds payable from utility revenues under the provisions of this Sub-part or any other law may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on the outstanding bonds. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, except that no election shall be necessary in the event the refunding bonds are sold at public sale after advertisement in the manner provided by R.S. 39:570 and the annual principal and interest on the refunding bonds is less than the combined annual principal and interest on the bond issue or issues being so refunded, extended and unified. The governing body, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the

rights of the holders thereof in all respects as herein provided for other bonds issued under the authority of this Sub-part. The governing body may also provide that the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded. (As amended Acts 1962, No. 224, § 1.)

§ 4260. Contesting election and bonds; prescription

For a period of sixty days from the date of the promulgation of the result of any election held hereunder, any person in interest may contest the legality of the election, after which time no one shall have any cause of action to contest the regularity, formality or legality of the election for any cause whatever, it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of sixty days. The resolution authorizing the issuance of bonds shall be published once in a newspaper published in the municipality, or if no newspaper is published therein, then in a newspaper published in the parish in which the municipality is located, or if no newspaper is published in the parish then in a newspaper published in an adjoining parish. For a period of thirty days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds. After the expiration of thirty days no one shall have any right of action to contest the validity of the bonds or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds shall be conclusively presumed to be legal, and no court shall thereafter have authority to inquire into such matters.

§ 4261. Service charge for sewerage and garbage facilities

Where the revenues pledged to the payment of bonds

under this Sub-part are revenues of a utility comprised of sewerage facilities, or garbage facilities, the governing authority of the municipality may each year impose against the owners of all real property in the municipality a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property. The charges shall be sufficient to provide for the cost of operating and maintaining the utility and paying the interest and principal of the bonds secured by the revenues of the utility. No charges shall be made against the owner of any property which is not benefited by the utility. A list of the names of all owners against whom charges are so made and the amounts of the charge made against each owner shall be certified by the governing authority to the official charged with the assessment of taxes against the property at such time and in such manner in each year as to permit the amount of the charge to be carried upon the assessment roll of the real property in the municipality. Each charge shall be carried on the roll as a special item due by the owner of the property individually and shall be identified on the roll as "Special Sewerage or Garbage Charge of ———— (inserting the name of the municipal corporation)". The charges shall be paid to the official who collects the general taxes assessed against the real property located in the municipality, and shall be paid at the same time and in the same manner as the general taxes are paid. Where the ownership of any real property changes, the municipality may require any subsequent owner seeking sewerage or garbage service to apply therefor, whereupon the charges imposed against the owner shall be assessed and collected in the manner hereinabove provided. The municipality may pay the tax collecting official the same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may pay the assessing official a sum sufficient to re-

imburse him for additional expenses occasioned by reason of listing the charges on the assessment roll. The amounts to be paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

§ 4262. No restriction of acts authorized

This Sub-part shall constitute full authority for the accomplishment of all acts herein authorized to be done. No other law restricting the carrying out of the acts authorized to be done shall be construed as applying to any proceedings had or acts done pursuant to this Sub-part.

B. Title 39—Public Finance

Chapter 4—Bonded Indebtedness and Special Elections

PART II. ELECTIONS

§ 501. Elections

Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the constitution and laws of this state who vote at an election hereunder. The governing authority of any subdivision may call a special election for any of these purposes at any time; and it shall call an election for any of these purposes when requested so to do by the petition in writing of one-fourth of the property taxpayers eligible to vote at the election.

§ 502. Resolution calling election

The election shall be ordered by resolution which shall state the purpose for which it is called.

If the proposition is to incur debt and issue negotiable bonds under Part III of this Chapter,[1] the purpose

for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run, and the maximum rate of interest to be paid shall be stated.

If the proposition is to levy a special tax under Part IV of this Chapter,[2] the rate, object, and purpose for which the tax is to be levied, and the number of years it is to run must be stated. ([1]R.S. 39:551—39:670. [2]R.S. 39:701—39:706.)

§ 503. Notice of election

Notice of the election shall be given embracing substantially all matters required to be set forth in the resolution ordering the election, and shall set forth further that the authorities ordering the election will, in open session, at an hour and place named, proceed to open the ballot boxes, canvass the returns and declare the result. The notice shall be published for thirty days in a newspaper published in the subdivision; or if there is no newspaper published therein, in a newspaper published in the parish; or if there is no newspaper published in the parish, in a newspaper published in an adjoining parish, and by posting in three public places in the subdivision ordering the election. Four publications in a newspaper once a week, shall constitute a publication for thirty days; provided thirty days intervene between the date of the first publication and the date of the election.

§ 504. Polling places; ballots

The governing authority ordering the election, shall designate the polling places; provide the ballot boxes; ballots; valuations of property and compiled statement of the voters in number and amount, and fix the compensa-

tion of the election officers. It shall appoint for each polling place, three commissioners and one clerk of election, all of whom shall be registered voters.

§ 505. Election officers; substitutes

If any commissioner or clerk of election is unable, or if he fails or neglects to attend or serve at the polling place designated, at the hour fixed for opening, or within one hour thereafter, the commissioners present shall appoint, or in the absence of all commissioners the voters present shall elect the necessary number of commissioners and clerks, who shall have the same powers, compensation and duties, as other commissioners and clerks and shall serve in the place and stead of the absentee or delinquent appointees.

§ 506. Election officers; oaths

Commissioners and clerks of elections, before opening the polls, shall be sworn to perform all the duties incumbent on them as such, the oath to be taken before any officer authorized to administer oaths, or by the clerk, and each commissioner before any other commissioner. The commissioners of election may administer any oath and receive any affidavit provided for in this Chapter.

§ 507. Penalty for violations

The commissioners and clerks of elections held under the provisions of this Chapter shall have the same powers and duties in conducting the elections and in preserving order at the polls as are conferred and imposed upon similar officers under the general election laws of this state. Whatever is declared in the general election laws to be a felony, other crime or misdemeanor, shall be the same for

any election held under the provisions of this Chapter and shall be punished in the same manner.

Any wilful failure or neglect to comply with the requirements of this Chapter or any wilful violation by any officer, agent or employee of any subdivision, availing itself of the provisions of this Chapter, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment not exceeding one year, with or without hard labor, or by both fine and imprisonment.

§ 508. Qualifications of voters

Only property taxpayers qualified as electors under the constitution and laws of this state are entitled to vote in any election held under the provisions of this Part. The qualifications of taxpayers as voters are those of age, residence, and registration as voters, without regard to sex. There shall be no voting by proxy.

With reference to Part IV of this Chapter, if the limits and boundaries of any municipal corporation has been extended and the assessment roll that is to include the property in the extended limits has not already been made for the municipal corporation, those who have become property taxpayers by the extension of the limits and who are otherwise qualified to vote shall be permitted to vote in the election and the assessed valuation of their property shall be ascertained by reference to the last assessment roll of the parish. (1R.S. 39:701-39:706.)

§ 509. Use of tax receipts

A. In all elections held under the provisions of this Part and in all other elections whatsoever held under any other laws of this state where the only question submitted

is the incurring of debt and issuing of bonds or other evidences of debt and/or the question of levying special taxes, the voter shall use his tax receipt as obtained from the tax collector's office in determining the amount of assessment that shall be voted.

B. The registrar of voters shall furnish to the election commissioners appointed to hold such election the precinct binders showing those eligible to vote in said election. A taxpayer entitled to vote in said election shall present to the commissioners of election his tax receipt with the valuation of such taxpayer's property as shown by the assessment roll last made and filed prior to such election; provided, however, that when it is impossible for any taxpayer to present his tax receipt to show the valuation of his property, he shall be permitted to vote by the use of the copy of the tax receipt, which the commissioners shall find in the precinct binders. In case of loss of the original tax receipt and copy thereof, the commissioners of election may receive affidavits of such taxpayer's right to vote and of the proper assessed valuation of his property, which affidavits shall be attached to such taxpayer's ballot.

C. The tax collector in each of the sixty-four parishes shall make tax receipts for each taxpayer at the time the taxes are paid. Such tax receipts shall be made in a minimum of an original and three copies. The original shall go to the taxpayer and one copy to the registrar of voters, which shall be placed in the proper precinct binder and forwarded to the polls on election day. The additional copies shall be for the use of the tax collector.

D. Notwithstanding any provision of any law to the contrary, the provisions of this Section, with regard to the use of tax receipts shall be applicable at each election in this state in which there is submitted to the qualified prop-

erty taxpayer of any area of the state the question of incurring debt and issuing bonds or other evidences of debt therefor or the question of levying any tax. (As amended Acts 1964, No. 399, § 2; Acts 1966, No. 500, §§ 2, 3.)

§ 510. Challenging votes

If the vote of any taxpayer is challenged, the commissioners of election shall permit him to vote and shall receive in writing the grounds of challenge signed by the challenger, together with the challenged taxpayer's statement of his asserted right to vote and the challenge and statement shall be attached to the ballot.

§ 511. Form of ballot

If more than one proposition is submitted at the same special election, each proposition shall be so submitted as to enable the voter to vote thereon separately. The ballots to be used at special elections shall be in substantially the following form:

A. FOR THE INCURRING OF BONDED INDEBTEDNESS

Shall .....

(Name of Subdivision)

incur debt and issue bonds to the amount of.....

..... YES

Dollars,

to run ..... years,

from date thereof, with interest, at the maximum rate

of .....

per cent per annum for the purpose of.....

..... NO

Taxable valuation $.....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted on this ballot, place a cross (X) mark in the square after the word "YES"; to vote against it, place a similar mark after the word "NO".

B. FOR THE LEVYING OF A TAX

Proposition to levy a .....

(Rate)

mill

tax on all the property subject to State taxation

in ..... YES

(Subdivision)

for the period of .....

(Term)

for the purpose of .....

..... NO

(Here state the purpose of the tax)

Taxable valuation $ .....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted upon this ballot place a cross (X) mark in the square after the word "Yes"; to vote against it place a similar mark after the word "No".

§ 512. Voting

Each voter's name shall be written on his ballot. The commissioners of election shall receive the ballot of each

voter, check his name on the list of voters furnished by the registrar, enter and number his name on the list of taxpayers voting, and immediately deposit his ballot in the ballot box, reserving to each voter the right to so fold his ballot that it shall not be known at the time of voting whether he voted for or against the proposition or propositions submitted. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1] (As amended Acts 1964, No. 399, § 2.) ([1]R.S. 18:231 et seq.)

§ 513. Opening and closing polls

The polls shall open on the day appointed, at seven o'clock a. m., and remain open until and not later than six o'clock p. m. No election shall be vitiated by a failure to open the polls at the time prescribed, or by closing before the time prescribed, unless on a contest, it be established that voters were thereby deprived of votes sufficient in number and amount to have changed the result of the election.

§ 514. Counting ballots; precinct registers

A. Immediately after the closing of the polls, the commissioners shall, in the presence of the bystanders, open the ballot boxes; count the ballots found there; check the same with the list of voters; proceed to count the votes in number and amount; keep tally sheets in duplicate showing the votes in favor of and against the proposition or propositions submitted, and showing the valuation of property in favor of and against same; and make compiled statements in duplicate of the vote in number and amount, both in favor of and against each proposition or propositions.

B. After swearing to the correctness of the numbered list of voters, the duplicate tally sheets and duplicate compiled statements, the commissioner shall deposit the ballots, the registrar's list of voters, the numbered list of taxpayers voting, one duplicate tally sheet, and one duplicate compiled statement, in the ballot box, immediately seal the ballot box and, within forty-eight hours after the closing of the polls, deliver the sealed ballot box with its contents to the authorities ordering the election. Within the same period they shall deliver the duplicate tally sheet and the duplicate compiled statement to the clerk of the district court of the parish in which the election was held, who shall file them in his office. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1]

C. If the election commissioners on counting the ballots find that they do not correspond with the list of voters, they shall, before examining and counting the ballots, examine them for the purpose of finding the discrepancy and if it should be found that any ballots have been duplicated they shall be destroyed or, if it be found that the name of a voter has been omitted from the list of persons voting, it shall be added to the list. (As amended Acts 1964, No. 399, § 2.) ([1]R.S. 18:231 et seq.)

§ 515. Canvass of returns

On the day and at the hour and place named in the notice of election, the authorities ordering the election shall in public session open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns, and declare the result of the election. The result shall be promulgated by publication in one issue of a

newspaper published in the subdivision, or if there is none, in a newspaper published in the parish, or if there is none published in the parish, in the newspaper published in an adjoining parish.

§ 516. Process verbal

The authority ordering the elections shall keep a proces verbal of the canvass and shall forward a copy to the Secretary of State, who shall record it; another copy to the clerk of the district court, who shall record it in the mortgage records; and the remaining copy shall be retained in the archives of the office of the authority ordering the election.

§ 517. Preservation of ballots

The custodian of the archives or records of the authority ordering the election shall preserve for a term of three months from the date of the promulgation of the election, the ballots and other returns.

§ 518. Contests

For a period of sixty days from the date of promulgation of the result of any election held under the provisions of this Part, any person in interest may contest the legality of the bond issue provided for, the tax authorized or the assumption of debt provided for any cause, after which time, no one may contest the legality, formality or regularity of the election or debt assumption for any cause whatsoever. If the validity of any election is not raised within the sixty days herein prescribed, the authority to issue the bonds, and to levy the tax, or assume the debt and the regularity thereof, shall be conclusively presumed, and no court shall have authority to inquire into such matters.

With reference to Part III (A)[1] of this Chapter, if any resolution adopted or proceeding had more than thirty days

after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of the resolution or proceeding so adopted shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution was adopted or proceeding had. ([1]R.S. 39:551-39:578.)

APPENDIX B

OPINION AND JUDGMENT BELOW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
NO. 67-1853
SECTION "C"

JOSEPH Q. CIPRIANO,
Plaintiff,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN,
Defendants.

Before JOHN MINOR WISDOM, Circuit Judge, and ALVIN B. RUBIN and JAMES A. COMISKEY, District Judges.

ALVIN B. RUBIN, District Judge:

A resident of the City of Houma, Louisiana, has brought a class action seeking an injunction to prevent the City from issuing utility revenue bonds approved by a vote of the property taxpayers at a special election. In addition, he seeks a judgment declaring that the provisions of Louisiana law under which the election was held violate the federal constitution. The plaintiff is a qualified voter, but not a property owner. He contends that he and the other members of the class of resident voters who do not

own property in Houma have a proprietary interest in the municipal utility properties and that, since the Louisiana constitution and statutes permit only qualified resident voters who are property owners to participate in the election, they have been denied due process and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Louisiana constitution imposes limitations on the amount of debt a municipality may incur.[1] But in Louisiana, as in other states, these limitations apply only to debt that constitutes a general obligation of the municipality; debt that is a charge only on a special fund is not subject to the limitation.[2] Article XIV, Section M, of the Louisiana Constitution is typical of the provisions relative to such special funds: it provides that the legislature may authorize municipal corporations to issue bonds for the purpose of constructing, acquiring, extending, or improving any revenue producing public utility if the bonds are secured exclusively by a mortgage on the assets of the utility system and a pledge of its revenues, but that these bonds may not be a charge on the other public income and revenues of the municipality.[3]

Acting under this authority, the Louisiana legislature empowered municipal corporations to issue public utility revenue bonds for the purposes permitted by the constitu-

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[1] LSA-Const. Art. 14, § 14(f).

[2] The provisions limiting municipal indebtedness had their origin in the latter half of the 19th Century. Seeking to attract railroads, communities issued bonds and bought railroad stock with the proceeds. The depression of the 1870's rendered most of the stock worthless. Corrupt municipal administration also resulted in indiscriminate issuance of bonds to cover the cost of projects of questionable value. See generally in this regard, De Torres, Financing Local Government 26-27 (1967). See also Fowler, Revenue Bonds 46 (1938); Lutz, Public Finance 594 (1924); McDonald, American City Government and Administration, 406 et seq. (1955).

[3] Article XIV, Section 14(m) provides expressly that bonds of this nature "shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein."

tional provision.[4] The bonds must be authorized by a resolution of the municipal governing body.[5] As the Louisiana constitution requires, they must be payable solely from the revenues of operating the utility system, and they may not constitute an indebtedness or pledge of the general credit of the municipality.[6] Before the resolution authorizing the issuance of bonds may be adopted by the governing body, the question whether the bonds should be issued must be submitted to and approved by the votes of a majority in number and amount of the property taxpayers.[7]

The procedure contemplated by the Louisiana statutes was followed by the City of Houma. The Mayor and Board of Aldermen, the duly elected municipal governing body, adopted a resolution calling a special election. The election was held, and the bond issue was approved. The City applied to the State Bond and Tax Board for consent and authority to issue and sell the bonds.[8] Before they can be sold, it will be necessary for the municipal governing body to adopt a resolution for the issuance and sale of the bonds.[9]

While the plaintiff contends he was denied due process of law, he does not seriously press the claim. His real complaint is denial of equal protection of the laws, and he relies entirely upon *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663. In *Harper* the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prevents a state from exacting a poll tax as a condition of the right to vote in state elections.

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[4] LSA-R.S. 33:4251.

[5] LSA-R.S. 33:4252.

[6] *Ibid.*

[7] LSA-R.S. 33:4258. The election is also contemplated by the Louisiana constitution, Art. XIV, § 14(m), which provides, "The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds. . . ."

[8] LSA-R.S. 39:871; 47-1803-1804.

[9] LSA-R.S. 33:4252; see LSA-R.S. 33:4258.

Mr. Justice Douglas reasoned that, "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Id. at 665. A state "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." Id. at 666.

But this sweeping proposition is not decisive here. The Equal Protection Clause does not command state legislatures to make their laws conform to hydraulic principles by seeking the common—and lowest—level. "Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." *Walters v. City of St. Louis*, 1954, 347 U.S. 231, 237. In considering whether a classification rests on a real difference, we must take into account the nature and the relative importance of the subject with respect to which equality is asserted. "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 1964, 377 U.S. 533, 561-562.

But "the Equal Protection Clause is not shackled to the political theory of a particular era,"[10] not even the one in vogue at present. It does not forbid the states to fix

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[10] *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663, 669.

voter qualifications; it only, as *Harper* puts it, prevents them "from fixing voter qualifications which inviduously discriminate."[11] For "[t]here can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications [than residence] for the exercise of the franchise."[12] *Harper* holds merely that equal protection is denied when a state levies a poll tax. It does not declare that the Fourteenth Amendment abrogates the power of the states to classify voters.

Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational, arbitrary or capricious.[14] Only a few weeks ago, the Supreme Court indicated that these principles are still vital. In holding that the one man, one vote principal of *Reynolds v. Sims* was applicable to the selection of Texas County Commissioners it said, "The Equal Protection Clause does not, of course, require, that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or inviduous." *Avery v. Midland County Texas*, 36 U.S.L.W. 4257 (U.S. April 1, 1968), ____ U.S. ____.[15]

Unlike the poll tax rejected in *Harper*, the Louisiana statute attacked here does not limit suffrage in an election held to vote for political representatives or general governmental purposes. It deals solely with a vote on the issuance

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[11] *Id.* at 666.

[12] *Carrington v. Rash*, 1965, 380 U.S. 89, 91.

[13] *Williamson v. Lee Optical of Oklahoma*, 1955, 348 U.S. 483; *Carrington v. Rash*, 1965, 380 U.S. 89.

[14] *Bayside Fish Flour Co. v. Gentry*, 1936, 297 U.S. 422, 429; *Arkansas Natural Gas Co. v. Arkansas R.R. Comm.*, 1923, 261 U.S. 379, 384; Cox, Constitutional Adjudication and the Promotion of Human Rights, 80 Harv. L. Rev. 91, 94-95 (1966).

[15] See also *Dusch v. Davis*, 1967, 387 U.S. 112.

of municipal revenue bonds. The test to be applied is whether the distinction drawn between resident voters who are property owners and resident voters who do not own property is so arbitrary or invidious as to deny equal protection of the laws to the resident who does not own property. This can not be settled by resort to generalizations that would apply the same criteria to every ballot on every subject just because it is a ballot. Whether the distinction is invidious depends on the exact factual situation presented.

Before a utility revenue bond can be issued under the Louisiana constitutional and statutory plan, the property owners election must be authorized by an elected governmental body. The plaintiff has full suffrage in the election of this municipal governing body, as well as in the election of the Louisiana legislature. The property owners election called by the municipal governing body can only approve or disapprove the issuance of bonds. If it disapproves, its veto is decisive. But even if it approves, the municipal governing body has the final decision on whether the bonds should be issued.[16]

The election to approve the issuance of the bonds is not an election for general governmental purposes. It concerns the administrative functions of the municipality. This type of distinction has been considered important in determining what is required to afford equal protection to voters. See *Sailors v. Board of Education of County of Kent*, 1967, 387 U.S. 105.

The question here is not whether all voters resident in a municipality are equally qualified to vote on the issuance of utility bonds, nor whether they are all equally concerned with municipal utility services, nor whether they pay utility bills just like property owners, nor whether the people

[16] See, e.g., The Wall Street Journal, vol. XLI, no. 101 (Wednesday, May 22, 1968), p. 21, cols. 1 & 2.

of Louisiana in adopting their Constitution, or the Legislature of Louisiana in enacting its statutes have acted wisely in determining that only property owners can veto the issuance of revenue bonds. It is whether Louisiana's plan of governmental action is arbitrary or invidious with respect to the resident voter who owns no property. In deciding how they would authorize revenue bonds to be issued, Louisianians might have supposed, perhaps erroneously but without being irrational, that property owners by and large have a greater and more permanent economic stake in the community than non-property owners; that the values of property might be more directly affected by the quality and cost of utility service; that the success of a municipal utility system might yield funds for general municipal operation, relieving property owners of some of the burden otherwise borne by ad valorem taxes, while the failure of such a system might impair the credit of the municipality even though the bondholders have no claim to its funds. They might have recalled that in many cases the cost of installing utility services have been directly borne by subdividers of property.[17] They might have thought that property owners could better take into account such questions involved in utility operation as valuation of property, acquisition of rights of way, and durability of construction. In all of these matters, their conclusion might be different from the ones we ourselves would reach, and the conclusion might be one that cannot be scientifically established or proved by a preponderance of the evidence. But the question is not whether they are right, but merely whether they are so wrong as to be irrational.

As *Sailors* recognized, "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the

[17] E.g., Code of Ordinances, Jefferson Parish, Louisiana, § 18-11.

Constitution to prevent experimentation." 387 U.S. at 110-111.

There is no one light to kindle in state and municipal fiscal matters. Indeed, beset as state and local governments are by financial problems,[18] it may be that the gloom is impenetrable. But the legislatures of some states think that giving property owners the right to veto the issuance of revenue bonds serves as a wise fiscal restraint.[19] We cannot say that this conclusion is based on a distinction between those who own property and those who do not that is irrational, arbitrary or invidious. Those who, like the plaintiff, consider the Louisiana legislative provisions unwise have their general franchise unimpaired; they may seek to elect representatives who will vote for what they consider a better method of authorizing the issuance of revenue bonds.

In *Kramer v. Union Free School District No. 15*, 2 Cir., 1967, 379 F. 2d 491, Judges Kaufman and Hays held that a three-judge court should be convened to hear a case in which a bachelor who was not a property owner contended that he was deprived of equal protection by a New York statute that permitted only property owners, parents of students or persons who stood in loco parentis to students to vote in school board elections. Judge Lumbard considered the claim "so patently without any merit" that he dissented. In doing so he observed:

> ". . . [T]he franchise in local elections concerning, for example, water supply, sanitation removal, fire protection, and the operation of parks and schools is very commonly limited to those who use and/or pay for the services. And such limitations have a readily apparent and rational basis, the greater con-

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[18] See, e.g., The State of the States: Troubled, *Newsweek* (January 31, 1966), pp. 19-20.

[19] See, e.g., Texas Const., Art. VI, § 3a; *City of Richmond v. Allred, Tex.*, 1934, 71 S.W. 2d 233; Utah Const., Art. XIV, § 3.

> cern and awareness of those who use and pay for such services, for which there is no analogue when voting in a statewide legislative election is conditioned upon payment of a poll tax." 379 F. 2d at 497 (footnote omitted).

And he commented further,

> "[T]he salient vice of a restriction upon voting in statewide elections is that it tends to perpetuate itself by denying those it disadvantages any opportunity to remove it through democratic processes. See The Supreme Court, 1965 Term, 80 Harv. L. Rev. 91, 180 n. 23 (1966). By contrast, plaintiff can seek to have his exclusion from the school district franchise repealed by the New York legislature, for which his vote is unimpaired." *Ibid.*

Even when considering whether a state statute prohibiting the sale of obscene publications to juveniles impairs the right to free speech, the test of validity is not whether judges agree with state legislatures or whether the legislative findings express "an accepted scientific fact." For "[t]o sustain state power to exclude material defined as obscenity . . . requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors." *Ginsberg v. New York*, 36 U.S.L.W. 4295 (U.S. April 22, 1968), ... U.S. ..... "We do not demand of legislatures a 'scientifically certain criteria of legislation.'" *Ibid.*

If the federal system is to continue, the states must be free, within the limits of rationality, to adopt their own solutions to their own problems, to experiment even if their experiments sometimes fail. The courts are not a collective omniscent father who always knows best. The Constitution ordains a rule of reason, not a strait jacket of egalitarianism. It must allow that latitude that is essential to the experimentation, development and change needed by a na-

tion composed of fifty different states and thousands of stated-created political subdivisions. The measures adopted by Louisiana to meet its own notions of how its people should determine the desirability of issuing public utility revenue bonds are neither so arbitrary or irrational as to bring down the stricture of the Fourteenth Amendment. Judgment will therefore be entered for the defendant.

UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana.
July 15th, 1968.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

SECTION "C"

NO. 67-1853

CIVIL ACTION

JOSEPH Q. CIPRIANO

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN

JUDGMENT

Considering the written opinion of the Court on file herein, the dissenting opinion of Judge Wisdom, and considering the direction of the Court as to entry of judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, City of Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillian, and against plaintiff, Joseph Q. Cipriano, dismissing said plaintiff's suit with costs.

New Orleans, Louisiana, this 23 day of July, 1968.

/s/ JOHN MINOR WISDOM
UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

APPENDIX C

DISSENTING OPINION

CIVIL ACTION
NO. 67-1853
SECTION "C"

JOSEPH Q. CIPRIANO,
Plaintiff,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN,
Defendants.

WISDOM, dissenting.

I respectfully dissent.

I consider that *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169, controls the case before this court.

In *Harper* the Supreme Court found that "voter qualifications have no relation to wealth nor to paying or not paying this [poll tax] or any other tax". 383 U.S. 666. It is true that the tax itself was attacked in *Harper* and that a poll tax is a qualification limiting suffrage in an election to vote for political representatives. Here the qualification limiting voting to resident property taxpayers applies to a vote on the issuance of municipal revenue bonds. I recognize the differences in the two situations. But the basic similarity is more important than the differences. The common fact in both situations is that eligibility to

vote rests on payment of a tax. But all citizens have a stake in government—federal, state, or local government—regardless of ownership of property as evidenced by payment of a tax. This interest entitles each citizen to a voice in all elections in his city or state. As the Court said in *Harper*, "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored". 383 U.S. at 666. Here, in a bond election, a citizen's lack of ownership of taxed real estate is not proof positive of his lack of interest in his city's going into the utility business.

As my brother Rubin ably analyzes the issues, the case is not one to be settled by broad generalities. The issues reduce to the question whether the distinction between property owners and non-property owners is rational or arbitrary in fixing the qualifications for voting on the desirability of a city's issuing revenue bonds to acquire and operate a public utility. The city has the legal authority to issue such bonds, even without asking the advice of any of its electors, but if a city should in advance of issuance of revenue bonds ask for the approval of its citizens the equal protection clause prohibits the city's arbitrarily excluding from the election interested citizens.

Houma has a population of 35,000. As of October 24, 1967, there were 11,606 registered voters. Only 4,680 were taxpayers owning property and the total assessed value of their property was only $5,988,627. Thus forty per cent of the resident voters owning taxed property constituted a class controlling the interests of *all* the citizens of Houma in the policy decision submitted to the voters in the bond election. 1,828 voters representing an assessed valuation of $2,736,258 voted in favor of issuance of the bonds; 896

representing an assessed valuation of $1,108,268 voted against the bond issue.

As citizens of Houma, non-property residents have the same proprietary interest in municipal properties as resident taxpayers. They have the same interest in the administration of city affairs. And they are no less interested in the amount of their light bills than are property-owners. Indeed, since they constitute sixty percent of Houma's electors, they have a greater aggregate of interests than the property owners have in municipally owned utilities.

In the case before us; the discrimination against citizens not owning taxed property is exacerbated by the fact that the bonds are revenue bonds. The bonds are to be paid only from the operations of the utility; they are not a charge upon other income and revenues of the municipality and are not included in computing the indebtedness of the municipality for the purposes of any constitutional or statutory debt limitation. If the operations should be unprofitable, the property-owner will have no greater burden than anyone else. If the operations should be profitable, the profits go into the General Fund of the City of Houma and, presumably, will aid all the citizens in providing police protection, fire protection, and other city services.

There is a wide difference of opinion between the plaintiffs and the defendants as to whether the effect of Houma's ownership of utilities will be an increase or decrease in light and gas bills. But certainly everyone in Houma who flicks on an electric light or whose wife turns on the gas in the kitchen has a genuine interest in the question—whether he is a landlord or tenant. The tenant should be able to protect that interest by a declaration in the form of a vote—if the proposition is put to his landlord. In one way or another, the tenant pays the bill.

There may have been a time when ownership of property as a voter's qualification could have been defended as part of the American system of checks and balances. The vote of the property-owners could be looked to as a restraint on governmental operations financed by taxes. The framers of the United States Constitution did not adopt this limitation on federal sufferage, but a number of the states did limit the vote to freeholders. Now, however, we are living in an age when there are utility taxes, sales taxes, cigarette taxes, gasoline taxes, income taxes, and a host of taxes, notions of which never crossed the minds of the Founding Fathers. It is a mistake therefore to put all property taxpayers in a class with veto power over governmental revenue bond issues, as if other classes of citizens pay no taxes to their city or state and have no legitimate interest in governmental operations.

The defendant's argument that property owners have a special interest is enough in itself to destroy the rationality of the classification in a revenue bond election. In such an election, the vote is limited to persons whose property taxes will, by statute, not be increased if the revenues fall short of expectations. If the General Fund of the City should suffer, the greater share of the burden will fall on the excluded class of non-property owners, that is, sixty per cent of the resident voters. In final analysis, the requirement of property ownership invites the property owners, forty per cent of the voters, to vote themselves lower ad valorem rates or the continuance of existing rates while shifting the greater burden of carrying the City's General Fund to the other sixty per cent of the resident voters.

I would hold that the distinction between property owners and non-property owners in an election to vote on the issuance of municipal revenue bonds is so arbitrary as to deny equal protection of the laws to the excluded non-

property owning residents of Houma. Accordingly, I would grant the injunction and the requested declaratory judgment. Such a holding need not affect adversely bonds now outstanding. To protect the vested interests of cities and bondholders in bonds already issued, I would apply the decision—as I see it—prospectively only.